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No. 352.

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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

V. LOEWERS GAMBRINUS BREWERY CO., *Petitioner,*

against.

CHARLES W. ANDERSON, individually and as Collector of Internal Revenue of the United States, *Respondent.*

Reply Memorandum of Petitioner.

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Washington, D. C.,
October 6th, 1930.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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The Respondent has filed a memorandum herein. He does not oppose the petition but suggests that the review be limited to the question whether the Petitioner is entitled to any deduction for *obsolescence* of its tangible property in the years 1918 and 1919 under Section 234 (a) (7) of the Revenue Act of 1918 and that there be excluded from review the question of the right of the Petitioner under subdivision (a) (4) of the same section to a deduction in the year 1919 of the *loss* sustained in that year by the forced discontinuance of business under prohibition legislation.

Both questions have been considered by the courts in numerous cases; both questions are before the court on grant of certiorari; the one in *Lucas v. Niagara Falls Brewing Co.*, No. 61, and the other in *Lucas v. National Industrial Alcohol Co.*, No. 109. The two questions are closely connected. Under one subdivision deduction is allowed for exhaustion, wear and tear including obsolescence, and under the other, for losses sustained.

In many important cases involving breweries and distilleries, it will be found that both questions were presented to the court. While this case was pending, the Circuit Court of Appeals rendered its decision in *Clarke v. Haberle Crystal Springs Brewing Co.*, 30 F. (2d) 219, allowing the claim of the plaintiff there to deduct a reasonable allowance for obsolescence of good will. That decision authoritatively disposed of the instant case and it was apparently unnecessary to urge in the Circuit Court of Appeals any other question than that of the right to the deduction for obsolescence. This Court reversed the *Clarke* case (280 U. S. 384) and in disposing of the instant case the Circuit Court of Appeals placed its reversal upon the ground that the decision of this Court in the *Clarke* case permitted of no distinction between tangible and intangible assets.

If that be the proper interpretation of the decision a taxpayer would have no right to recover under either subdivision of Section 234. If that be an incorrect interpretation, as we believe, a taxpayer whose capital assets have been destroyed or rendered valueless by prohibition legislation, might be held to be entitled to a deduction under either subdivision.

For that reason, it is of interest to the Government and to the people that the review by this Court encompass the whole question.

Respectfully submitted,

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Washington, D. C.,
October 6th, 1930.